



## PLANNING DEPARTMENT

### Variance Requests / Staff Analysis & Recommendation

**TO: Board of Adjustment Members**

**FROM: Jorge G. Gomez, AICP  
Planning Director**

**DATE: July 11, 2008**

**SUBJECT: File No. 3371  
Morton's of Chicago/Miami Beach, LLC  
4041 Collins Avenue**

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#### **Request:**

The applicant is requesting a variance in order to create a porch/terrace along Collins Avenue to be used for outdoor restaurant seating and variances to place signage for an accessory use:

1. A variance to exceed by 10'-3" the maximum allowable porch/terrace projection of 3'-9" in order to create an outdoor dining area with a projection of 14'-0" (1'-0" setback from the front property line) and aligned with the existing south façade of the building, located at 5'-3" from the south property line.

- Variance requested from:

**Sec. 142-1132. Allowable encroachments within required yards.**

(o) *Projections. In all districts, every part of a required yard shall be open to the sky, except as authorized by these land development regulations. The following may project into a required yard for a distance not to exceed 25 percent of the required yard up to a maximum projection of six feet.*

(6) *Porches, platforms and terraces (up to 30 inches above the elevation of the lot, as defined in section 142-105(a)(1)e.*

2. A variance to allow the relocation of an allowable accessory sign facing the oceanfront to be relocated as a flat sign (with a size of 20 s.f.) to the front façade of the building.

- Variance requested from:

**Sec. 138-171. General provisions.**

(h) Oceanfront or bayfront buildings shall have no more than one sign facing the ocean or bay identifying the main permitted use. The area and location of the sign shall be approved by the design review board. In addition, one flat sign per 100 feet of lot width with copy limited to the advertisement of an accessory use is permitted.

**Sec. 138-172. Schedule of sign regulations for principal use signs.**

*RM-3, Flat: One per street frontage; ten square feet for every 50 feet of linear frontage, or fraction thereof, up to maximum of 30 square feet. Flat signs shall not be located above the ground floor.*

3. A variance to exceed by 13.12 s.f. the maximum allowable accessory sign size of 5 s.f. in order to place an 18.12s.f. accessory sign attached to the perimeter wall.

- Variance requested from:

**Sec. 138-172. Schedule of sign regulations for principal use signs.**

*RM-3, Detached (Monument): ...a detached sign located on a perimeter wall shall be limited to five square feet and shall not have to comply with the setback requirements of section 138-9. The height and size of the monument structure shall be determined under the design review process except as provided herein.*

## **Hardship Criteria:**

**Section 118-353. Variance applications.**

*(d) In order to authorize any variance from the terms of these land development regulations and sections 6-4 and 6-41(a) and (b), the board of adjustment shall find that:*

- (1) Special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same zoning district;*
- (2) The special conditions and circumstances do not result from the action of the applicant;*
- (3) Granting the variance requested will not confer on the applicant any special privilege that is denied by these land development regulations to other lands, buildings, or structures in the same zoning district;*
- (4) Literal interpretation of the provisions of these land development regulations would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of these land development regulations and would work unnecessary and undue hardship on the applicant;*
- (5) The variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure;*
- (6) The granting of the variance will be in harmony with the general intent and purpose of these land development regulations and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare; and*
- (7) The granting of this request is consistent with the comprehensive plan and does not reduce the levels of service as set forth in the plan. The planning and zoning director may require applicants to submit documentation to support this requirement prior to the scheduling of a public hearing or anytime prior to the board of adjustment voting on the applicant's request*

## **Background and Analysis:**

Zoning District: RM-3 Residential Multi-Family High Intensity

Morton's is the new ground floor tenant at the Crown, at the prominent location of Collins Avenue, between 40<sup>th</sup> and 41<sup>st</sup> Streets. To achieve their proposal to open this fine restaurant operation, three variances are required. The first one is to create an outdoor dining porch encroaching into the front setback and lining up with the current south façade of the building. This area is to be completely open, with balustrades defining the dining area. The historic building façade facing Collins Avenue would not be altered much by this addition, and the pedestrian experience will certainly be enhanced as passerby finds the small outdoor area, something very common along Collins Avenue.

The other two variances are for signage. The Code allows oceanfront buildings to have one flat sign per 100 feet of lot width with copy limited to the advertisement of an accessory use, with the area and location of the sign being dictated by design review approval. The restaurant proposes to take that flat sign and relocate it to the frontage along Collins Avenue, for visibility purposes for southbound pedestrian and vehicular traffic. Design review staff has studied the proposed sign and has verbally approved its size and location. The last variance is to exceed the size of the accessory sign located on a perimeter wall. The Code allows one sign for an accessory use to a hotel to be 5 s.f. when attached to a perimeter wall. In this case, the sign will be attached to the corner wall/balustrade being proposed for the outdoor dining area, facing northbound traffic on Collins Avenue. Due to the location of this wall and its limited height, a larger sign is merited since it may be blocked from view at times by parked and traveling vehicles.

### **Recommendation:**

Staff recommends **approval** of the variances as requested with the following conditions:

1. Copy as proposed on the corner sign on the low wall shall read "Morton's *at the Crown*".
2. All letters shall be individually mounted and be reverse channel backlit. No exterior raceway or exterior disconnect switches shall be allowed. Any required electric switchbox shall be placed inside the structure not visible from the right-of-way.
3. Substantial modifications to the plans submitted and approved as part of the application, as determined by the Planning Director or designee, may require the applicant to return to the Board for approval of the modified plans, even if the modifications do not affect variances approved by the Board.
4. A landscape plan for the entire site, prepared by a Professional Landscape Architect, inclusive of street trees as per the City of Miami Beach Master Street Tree Plan, shall be submitted to and approved by staff before a building permit is issued for construction.

5. The applicant shall comply with all conditions imposed by the Public Works Department.
6. The applicant shall obtain a full building permit within eighteen (18) months from the date of this hearing. If the full building permit is not obtained within the specified time limits, the applicant may, prior to expiration of such period, apply to the Board for an extension of time; otherwise, the variance will expire, and become null and void. At the hearing on such application, the Board may deny or approve the request and modify these conditions or impose additional conditions. Failure to comply with this order shall subject the variance to Section 118-356, City Code, for revocation or modification of the variance.
7. This order is not severable, and if any provision or condition hereof is held void or unconstitutional in a final decision by a court of competent jurisdiction, the order shall be returned to the Board for reconsideration as to whether the order meets the criteria for approval absent the stricken provision or condition, and/or it is appropriate to modify the remaining conditions or impose new conditions.

JGG:RL:DBR

cc: Gary Held, First Assistant City Attorney